

**AMENDED 5/18/06
MINUTES HAMPTON ZONING BOARD OF ADJUSTMENT
THURSDAY, APRIL 20, 2006**

MEMBERS PRESENT: Robert V. Lessard, Chairman
Matt Shaw
Jennifer Truesdale
Tom McGuirk
Bill O'Brien

OTHERS PRESENT: Kevin Schultz, Building Inspector
Angela Silva, Recording Secretary

The Chairman called the meeting to order at 7:00 p.m. and lead the Pledge of Allegiance to the Flag.

REORGANIZATIONAL SESSION:

This being the first meeting after 2006 elections, a reorganization meeting was held.

Mr. Lessard called for nominations for Chairman.

Mr. O'Brien MOVED to nominate Vic Lessard for Chairman for another year. Mr. Shaw SECONDED.

VOTE: For 4, Oppo 0, Abst 1 (VL)

MOTION PASSES.

Chairman Lessard called for nominations for Vice-Chairman.

Mr. Shaw MOVED to nominate Mr. McGuirk for Vice-Chairman. Mr. Lessard SECONDED.

VOTE: For 4, Oppo 0, Abst 1(TM)

MOTION PASSES.

Chairman Lessard called for nominations for Clerk.

Mr. Shaw MOVED to nominate Mr. O'Brien for Clerk. Mr. McGuirk SECONDED.

VOTE: For 4, Oppo 0, Abst 1(BO)

MOTION PASSES.

Mr. Schultz informed the Board that Jack Lessard's tenure as Alternate to the ZBA has expired. Also Bill O'Brien's, but he is now a regular member. As it stands, Henry Stonie is the only Alternate.

Ms. Truesdale MOVED to nominate Jack Lessard as an Alternate to the ZBA, SECONDED by Mr. McGuirk.

VOTE: For 5, Oppo 0

MOTION PASSES.

Further discussion involving a third alternate followed.

Mr. McGuirk MOVED to postpone nominating a third Alternate until the next month. Mr. O'Brien SECONDED.

VOTE: For 5, Oppo 0

MOTION PASSES.

REGULAR MEETING:

Mr. Lessard thanked the Board for re-electing him as Chairman, and reminded all newly elected members to get sworn in by the Town Clerk. It was noted that everybody is sworn except Jack Lessard as he was waiting to get reappointed.

09-06 The continued petition of Earl & Carol Cheney for property located at 17R Johnson Avenue seeking relief from Articles 1.3 and 4.5.2 to allow a 4'x8' deck to be attached to the front of the existing cottage. This property is located at Map 289, Lot 44 in a RB zone.

Mr. Earl Cheney came to the table to speak on the petition. He said he would like to construct a 4x8 foot deck on the front of his existing cottage. He has met with Mr. Schultz and his neighbor and an agreement has been made. He has dropped the height down from 14 feet to 61 inches. The Chairman polled the Board regarding rehearing the 5 criteria from this petitioner. It was agreed by the members that this wasn't necessary.

Comments from the Audience:

Mr. Mike Baker, 11R Johnson Ave, thanked Mr. Schultz for mediating the situation. He said Mr. Cheney made some concessions and he now agrees with this new proposal and supports the petition. He has done a nice job improving the property.

The Chairman asked for further comments from the audience. There being none he closed the public hearing portion of this petition.

Back to the Board:

Ms. Truesdale MOVED to grant the petition, SECONDED by Mr. McGuirk.

VOTE: For 4, Oppo 0, Abstain 1(BO)

PETITION GRANTED.

Mr. O'Brien noted that he abstained because he wasn't at the first hearing.

22-06 The petition of Maureen & Eileen McCarthy for property located at 6 Perkins Avenue seeking relief from Articles 1.3, 4.5.1 and 4.5.2 to raise existing house to allow for two parking bays. This property is located at Map 293, Lot 12 in a RB zone.

Eileen and Maureen McCarthy came to the table to speak on the petition. Eileen said they've had problems with people parking in front of their property all summer and it has made it difficult to rent it out. They propose to raise the cottage and put open garage bays underneath. There will be no garage doors.

Questions from the Board:

Mr. O'Brien questioned the egress and the setbacks. He was concerned with the height change of the first floor and the need for more stairs to get to the ground. Eileen McCarthy said they were thinking of putting the stairs inside on the left front side. She thought the other side would be alright as it stands.

The Board felt there's no way the right side could meet the setbacks either. One set of entry stairs in the front were discussed. Mr. Schultz proposed the Board could vote to meet certain setbacks and she would have to conform to them and figure that out later with her contractor. He told the McCarthy's he was going to need construction drawings when they come in for a building permit.

The back stairs were also discussed and some missing, existing setbacks on the plan.

The abutters were discussed and the ownership of the right-of-way. Mr. McGuirk was familiar with the property and said they own about 5 feet, 10 inches and the owner on the other side owns about 8 feet. The McCarthy's weren't sure, they thought they owned it. It was determined that the abutter directly across the street from the right-of-way was not notified. Mr. O'Brien also noted that the criteria on page 3 hasn't been filled in on the application. Mrs. Eileen McCarthy said she was told she didn't have to fill that in and she thought she did get all her abutters. She asked Mr. Schultz why he didn't tell her about this. He said he can help with the drawings, but he can't help with the 5 criteria. He does his best to review the petitions when the agenda is set.

The Chairman told the McCarthy's that legally this petition can not be heard tonight. It will have to be resubmitted. Mr. O'Brien asked that they resubmit with more detailed drawings showing property egresses and setbacks and all the criteria should be filled in on the application.

23-06 The petition of Susan DeMarco for property located on Ward Lane seeking relief from Articles 4.2 Footnote 22 and 4.3 having frontage of 34 ft. and consisting of a 15 ft. wide driveway access plus 6.5 ft. wide utility, access and landscape easement; said lot does not meet the square requirement of footnote 22 to the dimensional table as well, though the lot is otherwise conforming at 36,142 +/- sq. ft. This property is located at Map 164, Lots 6 and 13.

Attorney Michael Donahue of Donahue, Tucker & Ciandella, PLLC and Ms. DeMarco came to the table to speak on the petition.

Mr. Donahue reported that Ms. DeMarco is a long time resident of Hampton. She would like to utilize this second lot of approximately 36,000 square feet for herself. Her intent is to build a new home for herself, on this lot at the rear of her property at 8 Ward lane. This lot is buildable under many issues. It currently has a 15 foot easement for access. It was approved by the Planning Board in 1965. We propose to add deeded frontage of 34 feet to the lot and a 6.5 access easement to aid in access to the lot. The roadway doesn't extend the full 50 feet of the the right-of-way. Maybe 10 feet isn't used on that side. She would have no problem if you stipulate it's for a single family only. There are no wetland issues. The property on the other side of the r.o.w. is undeveloped. There will be 21.5 feet available for access.

This use is nothing except reasonable, he said. The "olney" square cannot fit at the road, but it can fit back where the house is going to sit. This is consistent with the spirit and intent of the ordinance. This lot existed prior to 1970. It's indicated in the ordinance that lots like this should have some consideration. When this "square" was put in the ordinance, prior existing lots were not considered.

Ms. DeMarco distributed an updated version of the house she would like build.

Comments from the Audience:

Roger Sylvester, lot 7, asked where the power is going to go.

Ms. DeMarco said underground, through an easement or the driveway, on the other side of the house.

Mr. Sylvester said he is concerned that the trees would be cut down between himself and these two lots. The utility locations were discussed. Mrs. DeMarco agreed she would bring them down the right of way on the other side of her property.

Mr. Sylvester said he was told when he purchased in 1970 that that was a wood lot. A sewer pump may be needed. Where would that go? He asked.

Mr. Lessard said it would go in her cellar, or right outside the house.

The Chairman called for further audience input. There being none, he closed the public hearing portion of this petition.

Back to the Board:

Mr. Shaw asked if there were any wetland issues? Mr. Donohue responded no, only a small area at the back corner.

Mr. O'Brien asked why not deed over the 6.5 feet? Atty. Donohue said it's so that the house has a reasonable setback of 18.5 feet from the r.o.w. Mr. O'Brien said if they give up the 6.5 feet they will still have a reasonable setback.

Mr. Donohue replied, in terms of landscaping and doing it right, we felt that was the way to do it. We focused in on the attractiveness and not diminishing the value of the existing residence.

The Board discussed past approvals similar to this. Mr. O'Brien said if this were a new lot, he would be opposed because of footnote 22. But, because this is an exiting lot, he's o.k. with it.

Mr. Lessard asked if they wanted to keep the 125 foot frontage on the existing house lot. Ms. DeMarco agreed.

Mr. Shaw MOVED to grant the petition with the stipulation that all utilities will be installed in the driveway and/or the easement, SECONDED by Mr. O'Brien.

VOTE: For 5, Oppo 0

PETITION GRANTED.

24-06 The petition of James, Rosalyn and Mary Houston for property located at 733 Exeter Road seeking relief from Articles IV as to Footnote 22 and 4.2 and 4.3 to reconfigure two lots, one currently with a house frontage of 225 feet and 1 ½ acre area, and the other with no frontage and 3 acre area in Hampton. One of the new lots would have 200 feet frontage and 2 acre area and the other would have 25 feet frontage and 2 ½ acre area in Hampton. This property is located at Map 6, Lots 8 and 26 in a RAA zone.

Atty. Bob Casassa asked to defer this petition to after the next petition, as his clients aren't in attendance.

25-06 The petition of James & Darlene Ellis for property located at 14 Emerald Avenue seeking relief from Article 4.1.1 to demolish both of the existing structures and replace with a new 2-unit building. This property is located at Map 223, Lot 56 in a RB zone.

Atty. Bob Casassa and James Ellis came to the table to speak on this petition.

Atty. Casassa said this is a request for a single variance, 4.1.1. He read through the 5 criteria as presented with the petition, The plan is to remove the 2 dwellings that sit within the setbacks and erect a conforming structure that meets all the requirements except the land area per dwelling unit. This property is equal to or larger than every other property in the area. This proposal is consistent with the neighborhood. It will meet all setback requirements. This lot was originally 5 lots. We're not seeking to maximize height or lot coverage. This is consistent with the density of the neighborhood.

Questions from the Board:

Ms. Truesdale asked who is the property owner. Mr. Ellis replied he took ownership on March 30th.

Comments from the Audience:

Fran McMann, of 4 Ash Street, said they will meet the setbacks but will create an area violation. The lots have been combined since at least 1961 and maybe back to the 30's. Existing is 1 dwelling and an outbuilding. A house and a garage that was partly an old store many years ago. He's been there since 1971, and his wife since 1961, and the garage has been for storage only. It's not right to say you will correct one zoning violation and create another. There is 8,000 s.f. for one unit now. There are 20 homes along Emerald Ave. and they are all single family homes. He's sure the properties will suffer by over development of the area. This benefits one individual and every one else loses.

Cathleen Bean, directly across the street from this petitioner, requested that the Board deny the petition. This property consists of 1 seasonal residence and a smaller building that's never been used for anything more than a storage shed for 18 years. This is an overintense use of the land. They're requesting 53% of what's required for land area.

Ron Demers, 4 Spruce St, is concerned with the density and the land area, and public safety. The neighborhood has twelve foot wide streets. He's opposed to the petition. The neighborhood is not designed for this.

Kim Chase, 2 Spruce St, said she's opposed. She spoke to her neighbor, Mary Kelly, and she's opposed too. She recently bought in the neighborhood, with her husband, because of the quaintness of the neighborhood. The roads are very narrow. She's concerned with sewerage and water. She doesn't see how the lot can support this dwelling.

Bonnie McMann, Ash St, direct abutter, said the criteria has not been met. All the criteria should be met. This is more like rezoning than adjusting. This is contrary to public interest. This is one lot of 80 x 100 feet. Many people have done well with single family homes. This is a self imposed hardship. People have put money into renovating their single family homes with the confidence that the ordinance will protect them.

Chuck Palaces, 15 Emerald Ave, said he's been there for 5 years. One of things that attracted him was the fact that there are no multi-family residences on Emerald Ave. His home is a new home and is consistent with the neighborhood. Thorwald Ave is really dense. This will increase strains on town services.

Diane Palaces, 15 Emerald Ave, said she agrees with the others and Emerald Ave should stay single family homes.

Gary Chase, 2 Spruce St, said this is a wonderful single family area. We have a small cottage that we made a home. He's concerned with parking. We don't need more traffic, he said. Most of the homes are year round in the area. This could be redeveloped as one single family home.

Back to the Board:

Chairman Lessard spoke of Edna Pearl Parr who used to live in the neighborhood. The shed was once used as a yard goods shop. He offered Atty. Casassa to rebutt.

Atty. Casassa said the property is nonconforming relative to front and side setbacks. The proposal conforms except for the size of the lot. The proposal has cured what's contrary to the ordinance. There are 2 family dwellings in close proximity of this property. He has no desire to build something that maximizes profit. This property is probably larger than anyone that spoke here tonight. He's not seeking to build to 35 feet in height. A 4 or 5 bedroom house could produce as much traffic as this proposal. This is an improvement over what's there.

Mr. McGuirk agrees with the neighbors. This proposal is an overdevelopment of the lot. The road is very narrow. He's in real estate and the existing duplexes in that area can't sell.

Mr. Ellis said he's not a developer, he's also an owner in the neighborhood.

Ms. Truesdale asked what's on the tax card.

Mr. Casassa said there are 2 structures, not 2 actively used dwelling units. There is 1 residence with another structure with past uses including a possible store.

Mr. Shaw said he sees merits on both sides. 7500 square feet is required for a single family home. Maybe he couldn't even build a single family without a variance. He's not trying for the largest possible building. He's going to meet all setbacks. He has a little more than half the area.

Mr. O'Brien said he's in the same quandry. He could put a single family and he agrees with the overintensity of the neighborhood. But this is an RB zone where duplexes are allowed and many have been approved.

Mr. McGuirk feels if this were on the beach it would be a different story. This neighborhood was designed for camps and the road is more narrow than a lot of the Hampton Beach roads. This area needs to be preserved with a little bit of open space for year round use. This is why we rezoned Kings Highway and north of Winnacunnet Road.

Mr. Lessard said he drove down there and he agrees that RB could have duplexes. Where we did allow the duplexes they're in pretty tight.

Mr. Shaw said our job is to weigh out everything and decide.

Mr. O'Brien read 2 letters from the file opposed to the petition. Neil Parr of 10 Emerald Avenue and Norman and Virginia Milliard of 7 Emerald Avenue.

Atty. Casassa said you can't get more open space than meeting the setbacks. You can't make a qualitative difference with 1 or 2 driveways. This is a town road.

Mr. Shaw commented that the neighbors could end up with an 80 x 50 house, 35 feet high, with 7 bedrooms.

Mr. McGuirk MOVED to deny the petition, SECONDED by Jennifer Truesdale.

The Chairman polled the Board on the 5 criteria. Ms. Truesdale doesn't agree, Mr. Shaw agrees, Mr. O'Brien could go either way.

VOTE: For 3, Oppo 0, Abst 2(MS,BO)

PETITION DENIED.

A ten minute break was taken at 9:05 p.m.

26-06 The petition of Frederick Cyr for property located at 100 Ashworth Avenue seeking relief from Article 6.3.10 to allow for a condominium conversion where the parking shall be off-site and deeded per Article 6.3.9 and where the commercial unit shall be exempt from any parking requirements per Article 6.1.1. This property is located at Map 290, Lots 73 and 66 in a BS zone.

Atty. Steve Ells, Fred Cyr and Ernie Cote came to the table to speak on the petition.

Atty. Ells said the petitioner wishes to covert this building to a condominium type ownership. It contains 3 residential units and 1 commercial unit. Parking has traditionally been on the vacant lot on the corner of Ashworth and Keefe Avenues. Mr. Cyr owns both lots. The deck has been removed on the front of 100 Ashworth Ave. They have already been to the Planning Board to seek permission to convert to condos. 6.3.10 is a new requirement, requiring 1 legal onsite parking space for each unit. Because we were providing off-site parking we were denied conversion. 1 option was to come here and seek relief.

We're asking for 6.3.10 relief due to off-site parking. However, the other articles that allow deeded parking were not taken out of the ordinance(6.1.1 and 6.3.9). We propose to deed the parking or give an easement. We have a 36' curb cut. We are not obligated to provide parking for the commercial unit. The lot in the middle is not part of the condo conversion. Mr. Cyr is not sure he wants to condo this property at this point. There are still 6 other spaces left for this property.

Discussion of the Board:

Mr. Lessard feels if it's permanently deeded he should be o.k. These are however conflicting articles in the ordinance.

Mr. O'Brien would rather see the Planning Board handle this.

Mr. Schultz said that he and the Town Planner and a State of NH Planning Commission member have begun reviewing the zoning ordinance and highlighted areas that need to be revised.

Mr. O'Brien feels we would be ignoring the voters by passing this variance. Town's aren't supposed to discriminate against form of ownership when applying the zoning ordinance.

Mr. Ells said the plan is to dedicate a permanent parking easement.

Mr. O'Brien MOVED to postpone this petition to the next meeting to obtain input for the Town Attorney for 1) 6.3.10 interpretation, 2) 6.3.9 assured perpetual easement by deed (if applicable), 3) 6.1.1 as it pertains to the business unit, 4) Have lot 73 corrected, the deck removed and show more description of 104 Ashworth Avenue on the plans, SECONDED by Mr. McGuirk.

VOTE: For 5, Oppo 0

PETITION POSTPONED.

At this point Atty. Casassa asked the Board to postpone petition 24-06 as his clients didn't show up.

Ms. Truesdale MOVED to postpone petition 24-06 to the next meeting, SECONDED by Mr. Shaw.

VOTE: For 5, Oppo 0

PETITION POSTPONED.

BUSINESS MEETING:

The Board discussed revisions to the Rules and Procedures as proposed by Mr. O'Brien and Mr. Schultz.

Mr. McGuirk MOVED to adopt the revised Rules and Procedures for the Zoning Board of Adjustment, SECONDED by Mr. Shaw.

VOTE: For 5, Oppo 0

MOTION PASSES.

Mr. O'Brien MOVED to adjourn the meeting at 10:10 p.m., seconded by Mr. Lessard.

VOTE: For 5, Oppo 0

MOTION PASSES.

Respectfully submitted,

Angela L. Silva,
Recording Secretary